

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS: 06-0375P  
Indiana Corporate Income Tax  
For the Year 2004**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Ten-Percent Penalty.**

**Authority:** IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(a)(4); IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer requests that the Department exercise its discretion to abate the ten-percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer filed Indiana corporate income tax returns for 2004 on or about October 2005. The 2004 return indicated that taxpayer had overpaid 2004 income tax by approximately \$800,000. Taxpayer made a decision to apply the \$800,000 overpayment against its estimated 2005 income tax liability rather than obtain a refund. Thereafter – on or about July 2006 – taxpayer filed an amended 2004 return which indicated that taxpayer's 2004 income tax liability was greater than that originally reported on its October 2005 return. Taxpayer's 2004 income tax liability was approximately \$300,000 greater than originally reported.

According to taxpayer, the Department of Revenue (Department) assessed taxpayer a ten-percent "negligence penalty." Taxpayer protested the penalty, an administrative hearing was conducted during which taxpayer's representative explained the basis for the protest, and this Letter of Findings results.

**I. Ten-Percent Penalty.**

**DISCUSSION**

Taxpayer requests that the Department exercise its discretion to abate the ten-percent penalty.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(4) requires that a ten-percent penalty

if the taxpayer “fails to pay the full amount of tax shown on the person’s return on or before the due date for the return or payment.”

IC § 6-8.1-10-2.1(d) states that, “If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person’s return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty.”

Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to “be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.” Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on “reasonable cause and not due to willful neglect.”

Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish “reasonable cause,” the taxpayer must demonstrate that it “exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . .”

Under IC § 6-8.1-5-1(b), “The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” An assessment – including the negligence penalty – is presumptively valid.

Taxpayer’s position was that it did not need to pay the \$300,000 because it had not yet filed its 2005 return and had not yet utilized the \$800,000 overpayment. Taxpayer errs. Taxpayer had indicated to the Department that the \$800,000 was to be applied to its 2005 tax liability; the \$800,000 was not a free-floating asset available to satisfy the additional 2004 liability. Nonetheless, however erroneous was taxpayer’s position, the Department is satisfied that the underpayment of taxpayer’s 2004 tax liability was not attributable to willful neglect. The penalty should be abated.

### **FINDING**

Taxpayer’s protest is sustained.

DK/DP/BK – December 27, 2006.